

1 UNITED STATES OF AMERICA,)	
2)	
3	Plaintiff,)
4)
5	v.)
6)
7	CORNELL MAXEY, Jr.,)
8)
9	Defendant.)
10)

No. CR-10-0659 DLJ

ORDER

On April 29, 2011, the Court heard argument on Defendant Maxey's Motion to Suppress Evidence. James Mann appeared on behalf of the government; Joyce Leavitt appeared for defendant Cornell Maxey, Jr. ("Maxey"). After the hearing, the Court held an *in camera* session discussed in greater detail below. The Court held further hearings on the matter on May 20, 2011 and July 22, 2011. Having considered the arguments of counsel, the papers submitted, the applicable law, and the record in this case, the Court hereby denies defendant's Motion to Suppress.

I. Factual Background and Procedural History

On May 14, 2010, Oakland Police Officer Steve Valle ("Officer Valle") submitted an affidavit to obtain a warrant to search a residence in Oakland, California, for drugs, for guns, and for gang indicia based upon alleged criminal conduct by the defendant. See Affidavit for Search Warrant, attached as Exhibit A to defendant's Motion to Suppress.

The affidavit stated that Officer Valle knew Maxey to be a member of "significant status" of a gang in West Oakland. Exhibit A

1 at 3. Officer Valle had investigated Maxey over the past several
2 years for "his involvement in the narcotics and firearm trade"
3 within the gang. Id. The affidavit said that Officer Valle had seen
4 Maxey during the preceding four months in the neighborhood where
5 the gang had its turf, wearing gang-related baseball caps,
6 surrounded by other gang members "known and unknown" to the Officer
7 and involved in what the Officer "believes is facilitating
8 narcotics sales" between other gang members and unknown people. Id.

9
10 During the preceding few months, Officer Valle also had seen
11 Maxey driving an older, four-door, black Escort. Id. According to
12 the affidavit, Officer Valle had received information from a
13 confidential informant ["CI"] that the CI had seen a man he knew as
14 "Corn" or "Cornell" (whom the CI identified from a photograph as
15 Maxey) in the area of 30th Street and Martin Luther King Jr. Way
16 within 72 hours of May 14, 2010 carrying a gun upon his person.
17 Exhibit A to the Motion at 4.
18

19 The affidavit stated that Maxey is a convicted felon and is
20 currently on parole for possession of crack cocaine for sale. Id.
21 at 3. The CI described the gun and said that he saw it inside
22 Maxey's waistband area and that Maxey was showing it off to other
23 gang members in the area. Id. at 4.
24

25 According to the affidavit, the CI is a "credible and reliable
26 informant," who is familiar with "street terminology" used to
27 describe different types of guns used by people committing crimes
28

1 in Oakland. Exhibit A at 3. Officer Valle stated in the affidavit
2 that the CI is credible because the CI has correctly identified
3 people who Officer Valle was investigating as gang members; because
4 the CI identified locations from which gang members were selling
5 drugs, and that Officer Valle had seen drug transactions at these
6 locations; and because the CI gave information about unsolved
7 homicide cases involving gang members that was corroborated by
8 information obtained independently by homicide investigators.

9
10 Exhibit A at 4. The affidavit stated that the CI is providing
11 information "for leniency consideration." Id.

12 Officer Valle's affidavit stated that the CI also had told him
13 that the CI recently had heard Maxey state that he was living with
14 his girlfriend Synetta in the Lower Bottoms area of Oakland. Id.
15 Officer Valle knew Synetta to be Synetta McDaniels ("McDaniels").
16 Id.

17
18 Maxey had been stopped on April 3, 2010, while driving a black
19 Ford Escort that the affidavit stated was "currently
20 registered to Synetta McDaniels" at a residence in Oakland. Id.
21 Maxey and McDaniels also had been stopped, in the Ford Escort, for
22 driving without a license plate on April 15, 2010. Id. Officer
23 Valle stated in the affidavit that Oakland police officer
24 McGiffert, who conducted the latter traffic stop, "reported that
25 Maxey and McDaniel's [sic] home address" was the residence
26 for which Valle sought to obtain the search warrant. Id. This
27
28

1 residence is within the Lower Bottoms area of Oakland. Id. Officer
2 Valle determined, through Officer Bradley Baker's contact with the
3 Oakland Housing Authority ["OHA"], that McDaniels, with her two
4 children, was the registered tenant of the Oakland residence. Id.
5 at 5. Officer Baker also reported having seen the Ford Escort which
6 had been driven by Maxey parked near this residence on May 13,
7 2010. Id. Officer Baker determined through OHA that Maxey was "no
8 longer the listed tenant" for an apartment in Oakland ["Oakland
9 apartment"] that was his listed parole address. Id.

11 Based on the information provided by [the CI], Officer Valle
12 believed that Maxey had "at least one semi-automatic handgun" in
13 the residence. Id. Officer Valle stated that, based on his
14 experience, "gang members involved in narcotics trafficking and
15 weapons violations often possess additional evidence of such at
16 their residences." Id. He stated that it is common for gang members
17 on parole or probation with a search clause not to live at their
18 listed parole or probation addresses. Id.

20 A state court judge issued the search warrant on May 14, 2010.
21 The warrant authorized police to search the stated residence for
22 and to seize three categories of property: Narcotics/ Drugs/
23 Controlled Substances; Firearms, and related items; and Gang
24 Indicia.

26 A search of the residence was conducted pursuant to the
27 warrant on May 20, 2010. Maxey and Synetta McDaniels were present
28

1 when police arrived. During the search the police located a gun,
2 which is the subject of the charges against defendant, as well as
3 two baseball caps, which the police took as gang indicia.

4 Maxey brought this motion to suppress. He alleges that the
5 search warrant was improperly granted and therefore the fruits of
6 the search should be suppressed. Defendant denies the veracity of
7 the information asserted in the warrant regarding him having showed
8 off a weapon and further denies that he had made any statements, at
9 the time referenced, about living with his girlfriend. The
10 defendant claimed that Valles' affidavit was a fabrication and
11 questioned the existence of a confidential informant and whether
12 any such informant had actually made the statements reported to the
13 judge by Officer Valle.
14

15
16 Based on the above concerns, the Court held an *in camera*
17 proceeding at which the informant appeared and testified as to
18 contact with Officer Valle. The Court thereafter determined that no
19 further evidentiary hearings on the matter would be needed as
20 discussed below.

21
22 **II. Discussion**

23 Defendant argues that the warrant was the product of false and
24 misleading statements; that even if one were to consider the
25 alleged false and misleading statements that the affidavit does not
26 establish probable cause; that the warrant was overbroad, requiring
27 suppression of the total warrant; that the government has not
28

1 carried its burden of demonstrating that the good faith exception
2 to the warrant requirement applies; and that the government has not
3 met its burden of establishing that the search was a lawful parole
4 search.

5
6 A. Did Officer Valle provide false and/or misleading
7 statements in the warrant application?

8 Defendant argues that the warrant should not have been issued
9 as it was supported by false and misleading statements asserted to
10 have been made by a confidential informant who defendant asserts
11 does not exist, and also because statements in the affidavit made
12 by Officer Valle as to defendant's residence were either
13 intentionally or recklessly misleading.

14 1. Does the Confidential Informant Exist?

15 The government argues that the warrant application is
16 supported by probable cause based on statements of a confidential
17 informant who is (a) reliable and (b) whose statements were to a
18 certain extent corroborated by the police.

19
20 The defendant questioned the existence of the alleged
21 informant based on: (a) the conclusory nature of the statements
22 ascribed to the informant; (b) the police officer's failure to
23 include any specific information about the informant's police
24 record; (c) defendant's affidavit denying under oath that the
25 statements about the gun and his living situation ascribed to him
26 by the information were in fact made by him; and (d) the fact that
27 at the time the police applied for the affidavit, homicide
28

1 investigators were conducting an investigation of the murder of the
2 person from whose body the defendant is alleged to have taken the
3 gun in question.

4 The two key assertions of the informant on which the affidavit
5 rests are that the informant alleged that he/she saw Maxey showing
6 off the gun to gang members in the area of 30th Street and Martin
7 Luther King Jr. Way within 72 hours of the date of the affidavit,
8 May 14, 2010. The informant is also alleged to have stated that he
9 or she overheard Maxey discussing that he lived with his
10 girlfriend, Synetta in the Lower Bottoms area of Oakland. These
11 assertions were the linkage between the gun and the residence
12 searched. The residence information was ostensibly corroborated
13 when police stopped Maxey and Synetta McDaniels during a traffic
14 stop on April 15, 2010.

15 Maxey filed a sworn declaration disputing these two facts. He
16 states in his declaration that he did not have the gun in his
17 waistband or display the gun in the physical area described by the
18 informant within the time period stated in the affidavit. He also
19 denies that he told people in mid-May that he was living with
20 McDaniels or that he gave the officers her address as his own
21 during the April 15, 2010 traffic stop.

22 Defendant further questioned the existence of the informant
23 based on the lack of specificity in the informant's statements
24 about the time, date, location and circumstances as to where Maxey
25
26
27
28

1 allegedly showed the gun and also where and when he allegedly told
2 people about his living situation.

3 Defendant also questioned the existence of the informant based
4 on the fact that there are no details in the affidavit regarding
5 the informant's criminal history. The only disclosure in this
6 regard is the mention in the affidavit that the informant is
7 cooperating for "leniency consideration." The omissions may be
8 troubling, but they are not fatal to the warrant application. See
9 United States v. Reeves, 210 F.3d 1041, 1045 (9th Cir. 2000) and
10 United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988).
11

12 Defendant argues that the appropriate recourse for this
13 uncertainty about the existence of the informant is for the Court
14 to have an *in camera* hearing to question Officer Valle about the
15 existence of the informant. See U.S. v. Reeves, 210 F.3d 1041,
16 1045 (9th Cir. 2000).
17

18 Based on all of the concerns raised by defendant, the Court
19 did find that an *in camera* proceeding with the confidential
20 informant was warranted. The Court held such a hearing. Prior to
21 the hearing, the Court did not solicit questions from the defendant
22 to be asked of the confidential informant. The defense had
23 indicated that it was willing to submit questions, and the Court
24 acknowledges that had such an opportunity been offered, the defense
25 would have taken advantage of that chance. Nonetheless, neither
26 the opportunity to present questions nor the use of questions
27
28

1 provided by the defense is required by due process. Defense
2 counsel acknowledged at the later hearing on this motion that the
3 Court is capable of ascertaining the necessary information without
4 the use of questions presented by the defense. Nor was the Court
5 willing, as requested by the defendant, to provide defendant with a
6 redacted transcript of the proceeding, as such would undermine the
7 *in camera* nature of the proceeding. Having conducted such a
8 proceeding, the Court satisfied itself that Officer Valle's
9 representations in the warrant regarding statements by a
10 confidential informant had a basis in fact and were not misleading.
11

12
13 2. Are Valle's statements about Maxey's residence
14 Misleading ?

15 Defendant states that Officer Valle's statements in the
16 affidavit regarding defendant's residence omit certain facts, the
17 effect of which is to make the affidavit intentionally or
18 recklessly misleading. As noted above, the bases for the warrant
19 stating that Maxey lived in McDaniels' residence were: (1) the
20 confidential informant's report that Maxey stated that he was
21 living with Synetta; the April 15 traffic stop and the fact that
22 Maxey had been observed driving McDaniels' black Ford Escort, which
23 was parked near McDaniels' home.
24

25 There is some factual question about what defendant stated
26
27
28

1 about his residence during the April 15, 2010 traffic stop¹ and
2 there are is also some uncertainty about what the state of
3 defendant's lease was.² According to Maxey he was only an
4 occasional guest at McDaniels' residence and he had no key to her
5 residence, did not keep his belongings there and did not receive
6 mail there. The Court notes that Maxey was in fact at McDaniels'
7 house when the warrant was executed. Moreover, the Court has
8 satisfied itself about the statement of the confidential informant
9 regarding Maxey's statements about his place of residence.
10 Therefore, defendant's argument that the affidavit was
11 intentionally misleading on the issue of defendant's address is
12 unavailing.
13

14
15 3. Statements about Maxey in Relation to Drugs

16 Defendant also asserts that the affidavit is misleading in
17

18 ¹ As to the traffic stop, at the stop there were two officers,
19 Officer McGiffert and his partner, Officer Johnson. According to
20 the report, Johnson spoke with Maxey and McGiffert spoke with
21 McDaniels. However, it is McGiffert, not Johnson who is alleging
22 that Maxey told him that he lived at Synetta's residence. There
23 appears to be some room for questioning the accuracy of this
24 report.

25 ² The affidavit stated that Maxey had been removed from the
26 lease of the residence which was his parole address, but again the
27 facts on this are unclear. On the 2002 lease, Maxey's name is
28 crossed out with the word "delete" written on it. Defendant
indicates that this means that he was taken off the list in 2002.
However, the date that this change to the lease was made is not
clear. There is no date next to the annotation. Valle states that
he did not know when he submitted the affidavit when Maxey had been
removed from the lease, although Special Agent Huggins states that
on March 25, 2011 an agent from the Oakland Housing Authority told
him that Maxey had been removed from the lease in 2008.

1 that it intimates that he is a drug dealer and there are facts
2 which were available to Officer Valle but which he chose not to
3 include which controvert this assumption. The affidavit states
4 that Valle had observed defendant "facilitating" narcotics sales.
5 It is unclear what this means. In the eight police contacts with
6 Maxey that the government references in its opposition, the police
7 searched Maxey during most of those contacts. The only drugs found
8 were small amounts of cough syrup with codeine. The Court does not
9 find that there is any sufficient showing that the statements about
10 drugs were intentionally misleading such that the warrant should
11 not have issued.
12

13 B. Does the Court need to hold a Franks hearing?

14 A defendant is entitled to a Franks hearing to challenge the
15 validity of a search warrant affidavit upon a substantial
16 preliminary showing that the affiant deliberately or recklessly
17 included false statements in the affidavit. United States v.
18 Napier, 436 F.3d 1133, 1136 (9th Cir. 2006). Specifically, the
19 defendant must (1) allege the specific parts of the warrant that he
20 claims are false; (2) allege that these false statements were made
21 deliberately or with reckless disregard for the truth; (3) present
22 a detailed offer of proof; (4) challenge the veracity of the
23 affiant; and (5) show that the false statements are necessary to
24 establish probable cause for the warrant. United States v. Kiser,
25 716 F.2d 1268, 1271 (9th Cir. 1983). A defendant also may
26
27
28

1 "challenge a warrant affidavit valid on its face when it contains
2 deliberate or reckless omissions of facts that tend to mislead."
3 United States v. Stanert, 762 F.2d 775, 781 (9th Cir. 1985). Given
4 the results of the in camera proceeding, and the Court's analysis
5 stated above, the Court finds that there is no requirement to hold
6 a Franks hearing.

8 C. Does the Good Faith Exception to the Warrant Requirement
9 Apply Here?

10 The government contends that even if the warrant lacked
11 probable cause, the officers conducting the search should have been
12 able to rely on it and thus the search falls into the good faith
13 exception to the warrant requirement. The government bears the
14 burden on this point. United States v. Leon, 468 U.S. 897, 913
15 (1984). The Leon exception does not apply if the affidavit so
16 lacked indicia of probable cause that an officer could not
17 reasonably have relied on it. Id. at 923. As noted above, this is
18 not the case. It may be that some of the information in the
19 warrant is lacking in specificity, however giving proper credit to
20 the information supplied by the Confidential Informant, the warrant
21 relying on the warrant was not, as a matter of law, unreasonable.

22 D. Could the Government Have Searched Anyway as a Result of
23 Maxey's Probation Conditions?

24 The government claims that, in any event, the police could
25 have searched Maxey because of his parole condition. This argument
26 is based on two notions. First, the police had to have known at
27
28

1 the time of the search about his parole conditions. Given the
2 number of times that Maxey had been stopped and searched
3 previously, his general familiarity to the OPD, and the
4 accessibility of his parole status by police radio, it seems
5 reasonable to believe that the OPD officers would have been aware
6 of his parole status prior to a search.
7

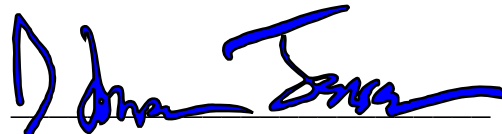
8 The second issue was whether the police could have
9 appropriately thought about that defendant resided with McDaniels
10 in her home. Since the confidential informant had stated that
11 Maxey was living with McDaniels, this could have been a sufficient
12 basis for the police to believe that the Residence was within the
13 scope of Maxey's search conditions. However, given the Court's
14 findings that the search warrant was proper, there is no need to
15 determine this issue.
16

17 **III. CONCLUSION**

18 For the reasons outlined above the Court DENIES defendant's
19 Motion to Suppress Evidence.
20

21 IT IS SO ORDERED
22

23 Dated: August 12, 2011
24



25 D. Lowell Jensen
26 United States District Judge
27
28